IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

RFA.No. 137 of 2004()

OS.121/1981 of SUB COURT,THODUPUZHA
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APPELLANTS/DEFENDANTS
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1. STATE OF KERALA REP.BY CHIEF SECRETARY
   TO THE GOVERNMENT OF KERALA, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. M.K.CHANDRASEKHARA IYER,
   D.F.O.KALLAR VALLEY TEAK PLANTATION DIVISION,
   ACHENCOIL, CHENCOTTAH (VIA), QUILON DISTRICT,
   KERALA.

3. M.S.JOY, SILVIVULTURAL RESEARCH
   OFFICER, TRIVANDRUM.

4. THE DIVISIONAL FOREST OFFICER,
   KOTTAYAM.

5. FOREST RANGE OFFICER, KUMILY RANGE.

R1 TO R5 BY GOVERNMENT PLEADER SRI V.T.K.MOHANAN

RESPONDENTS: PLAINTIFF

M.L.GEORGE AGED 31, S/O.LUKA,
RESIDING AT MALIAKAL HOUSE, MUTHALAKODAM KARA,
THODUPUZHA VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16-11-2007 ALONG WITH RFA NO. 356 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A. 816/2004 IN RFA 137 OF 2004

DISMISSED.

16-11-2007 SD/- P.R.RAMAN, JUDGE.
SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

P.R.RAMAN & V.K.MOHANAN,JJ

R.F.A.Nos.137 of 2004

&

(Indigent) R.F.A. No.356 of 2004

Dated, 16th November, 2007.

JUDGMENT

Raman, J.

Both the appeals arise from the same judgment rendered by the court below. Defendants in O.S.No.121/1981 are the appellants in RFA 137/2004 and the plaintiff in the same suit is the appellant in RFA 356/2004. The matter arises out of O.S.121/81 on the file of the Subordinate Judge's Court, Thodupuzha with respect to claim for damages instituted by the plaintiff. The plaintiff purchased certain timber articles in public auction which were the thondi articles in 8 criminal cases pending before the Judicial First Class Magistrate Court, Nedumkandam. Pursuant to the public notice, plaintiff participated in the auction and bid the goods in auction for a sum of 20,990/-. The properties bid were covered by various mahazars produced as exhibits in the case. However, the plaintiff's contention is that he could not remove all the articles bid by him in the auction since the defendants did not give himthe

exact quantity of the goods purchased at the auction. He transported the goods which fall short of the quantity purchased by him with respect to which he claims for damages. The goods which he transported are covered by passes issued by the departments, i.e., Exts.A23 and A24. Exts.A29 and A 45 are the quantity of goods sold in the auction. Though the defendants contended that the plaintiff had removed more timber than what he has purchased as per the passes issued and denied the plea of the plaintiff that he suffered damages, after trial, the suit was decreed for Rs.39033.49 with interest at 6% per annum. Both the plaintiff as well as the defendants preferred appeal before this Court as A.S.16/91 and A.S.77/90 respectively against the said judgment and decree passed by the court below. This Court by judgment dated 26th November 2001 disposed of the appeals by a common judgment remanding the case to the court below after entering the specific finding that the court below had committed error in quantifying the damages based on the quantity. What was actually sold at the auction was not based on the quantity but based on the mahazars

prepared in the case. In paragraph 4 of the judgment it was held that the purchaser will be entitled to remove the goods covered by the mahazars. The quantity of timber sold at the auction has no relevance at the sale, but the goods sold are to be identified by the mahazar. It was also found that Ext.A25 is another pass issued based on which certain amount of goods have been transported. But the court below did not give credit to the same based on Ext.A25. Therefore, while quantifying the damages, what is relevant is the value of the timber sold by lot less what the value of timber covered by Exts. A 22, A 23, A 24 and A 25 passes. The difference between the two amounts which will be the loss suffered by the plaintiff and that he will be entitled for a decree for the said amount with 6% interest. In the penultimate paragraph of the judgment it was held as follows: "The suit is remanded to the trial court for fresh assessment of the value of damages to be payable after assessing the value of the goods sold as per the mahazars. The value of the goods sold as per Exts.A29 and A 45 less the value of the timber released as per Exs. A23, 24 and 25

will be the loss sustained by the plaintiff". Pursuant to the remand, the court below re-assessed the damages and by the judgment impugned in these appeals, the loss was estimated at Rs.87,086.85 and a decree was passed for such amount with interest at 6% from the date of the suit and also awarded cost at proportionate rate. Since it was an indigent suit, copy of the decree was forwarded to District Collector as contemplated in Rule 14 of Order 35 of CPC.

2. Both sides come up in appeal before us. We shall now take the appeal filed by State i.e., R.F.A 137/2004. The only contention raised is against the claim made by the plaintiff and allowed as per paragraphs 17 and 18 of the judgment wherein the court below accepted the claim made based on Exts.A53 and A61. As per paragraph 17 of the judgment, after referring Exts.A53/61 based on which the plaintiff submitted that these items of timber are collected from jungle from which 15 logs were allowed to be transported and those 15 logs formed part of the items in mahazar in OR 106/78 and the remaining one item from the mahazar in OR 107/78, it was held that out of the total 103 pieces of logs

involved in O.R.106/78 barring the 15 logs already taken delivery, the plaintiff is entitled to get 88 logs shown in annexure D. Exts.A24, A24(a) as well as Ext.A53/61 would show that O.R. was registered against the workers of the plaintiff and later under Ext.A24 pass 15 items referred therein were allowed to be transported. Barring these 15 items the remaining logs were not allowed to be delivered by the plaintiff. Therefore, the plaintiff is entitled to realise the value of the remaining 88 items described in annexure D. An amount of Rs.11,317.69 was the amount realisable from the State in this regard. The contention of the Government Pleader is that the claim made based on annexure D is extraneous and do not considered by Ext.A45 list. On the contrary, it is contended by the learned counsel appearing for the plaintiff that these are all items part and parcel of the Ext.A45 list and supported the judgment in this regard.

3. We have perused the records. Log No.354/77 in Ext.A45 10 metric tonnes of fire wood is covered by OR 186/77. Likewise, log 424/77 15 metric tonnes of fire wood is covered by OR 196/77 and OR 193/77 as the case may be.

Therefore, there is no basis for the contention that these items are not included in Ext.A45 list. The contention of the State in this regard is therefore rejected. In paragraph 18 of the judgment, the claim based on annexure E to the affidavit is considered. This claim is based on Ext.A26 and A24. Ext.A26 is in respect of O.R.107/78 which includes a list of 124 items of different species. One item No.59 in Ext.A26 was allowed to be transported under Ext. A24 pass. Barring the same, it was found that the plaintiff was entitled to get the value of the remaining 123 items. The loss in respect of the those 123 items were shown in annexure E, though the State has contended that these were not included in Ext.A45 list, we carefully perused Ext.A45 and find that there is no merit in the contention raised by the State. No other contention was raised by the State. In the circumstances, we find no merit in the appeal filed by the state. The same is liable to be dismissed and we do so.

4. In the appeal filed by the plaintiff i.e. RFA 356/2004, the main contention advanced by the learned counsel for the appellant is that the court below was not right in valuing the

goods for the purposes of quantifying the damages based on a letter written by the Chief Conservator of Forests, Trivandrum to the Secretary to Government, Agriculture (Forest) Department. According to him, this letter was not produced as exhibit in the case. It is the further contention that the court below did not give any acceptable reason for rejecting the valuation done by the plaintiff based on Ext.X1 as also the diaries, Ext.A47 and A48. At any rate, according to him, a statement was filed by the State on 30-5-2003 showing the value of the goods during 1978-79 before the court below and even that statement filed by the State, which according to him, is the scheduled rate and ought to have been accepted by the court below and there is no reason why the defendant's statement and the scheduled rate as per those statement was not accepted rather damages was quantified based on a letter. We have considered the said contention Though the burden is on the plaintiff to show as to the actual value of the goods during 1978 - 79 for the purpose of quantifying the damages payable to him, the plaintiff had in fact adduced some evidence in this regard. If for any reason the evidence

was not acceptable by the court below, we do not find any reason why the statement of the defendant could not be accepted and the court below based the letter which is not exhibited in this case valued the goods. According to us what has been produced as evidence by the plaintiff to show the value of the goods during 1978 - 79 may not be based on any official records and in the absence of any official records to show as to what was the actual rate of the various goods sold in auction, the value of the goods as per the statement filed by the State ought to have been accepted. But the court below has already valued the goods based on the letter. If as per the statement filed by the State referred to above, the value is more than the value as shown as per the letter referred in the judgment, such higher value as in the statement has to be given to the plaintiff. Therefore, the difference in value between the letter price and the statement price shall be given by way of additional compensation payable to him. This amount shall be worked out and appropriate orders passed by the court below.

5. It was then contended that the court below was not

right in rejecting the claim made by the plaintiff based on annexure F and dealt with in paragraph 19 of the judgment. According to the learned counsel, the finding of the court below that the claim based on annexure E has been allowed to be realised under pass 109/77 and 134/77 is wrong. According to him, the claim based on Ext.A19 is not extraneous as held by the court below. We have perused Ext.A19, 22 and 45 as also the pass 109/77 and 134/77. The contention of the appellant is that the actual quantity, for e.g., under lot No.425/77, sold was 14.426 metric tonnes containing 2 logs, whereas the total quantity released as per pass is only 7.636. True, there is force in this contention. But then, we are precluded from allowing the claim since the appellant is bound by the earlier remand order passed by this court wherein it was specifically found that the damages cannot be assessed based on the quantity but can only be done based on the articles sold. It was, after entering a finding as above, that the matter was remanded and it has become final. Since the appellant is bound by the finding so entered by this court, it is not open for him to say that what was actually removed

is lesser quantity than what has been purchased by him. In the circumstances, this contention is rejected.

6. Another contention is that his claim based on annexure C dealt in paragraph 16 of the judgment is based on mistaken impression that the claim does not find place in Ext.A45 list. Even though Ext.A45 list begins with lot No.339/77 towards the last page of the list, we find that item 1 to 12 do find a place in Ext.A45 list which are covered by lot Nos.330/77, 331/77, 334/77, 336 and 337/77 in the last 2 pages. Therefore, we allow this claim in reversal of the decree passed. Likewise, items 34 to 54 and 73 to 81 are also traceable from Ext.A29 list. Hence, we hold that the plaintiff is entitled to claim damages for these items as well.

7. In the result, we allow this appeal by way of remand on the limited aspects as noticed above .

8. Since this appeal is filed as indigent appeal, refund of any court fee does not arise. RFA 137/2004 is dismissed. RFA 356/2004 is allowed by way of remand. The entire records should be transmitted to the court below expeditiously. The court below shall dispose of the matter as

expeditiously as possible , at any rate, within 4 months from the date of receipt of records.

Appellant shall appear before the court below on 4-1-2008.

P.R.Raman, Judge.

V.K.Mohanan, Judge.

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: